

# Notice of Allowability

Application No.

10/092,153

Examiner

Keith Hendricks

Applicant(s)

MAY, EDWARD

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to \_\_\_\_.
2. ☒ The allowed claim(s) is/are 1-12.
3. ☐ The drawings filed on \_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

- |   |   |
|---|---|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. ____.             |
| 3 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No. <u>03-05-2002</u> | 7 <input type="checkbox"/> Examiner's Amendment/Comment                             |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                       | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|   | 9 <input type="checkbox"/> Other  |

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### REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance.

Listed below are the two pending independent claims:

1. A method of producing a tomato raisin, comprising:
  - (a) removing the skin from a grape tomato to produce a skinless grape tomato; and
  - (b) drying said skinless grape tomato to produce a tomato raisin.
11. A dried, skinless grape tomato having from 8% to about 16% water content.

The prior art recognizes the existence, production and use of tomatoes, dried tomatoes, cherry tomatoes, dried cherry tomatoes, and grape tomatoes. The prior art also demonstrates known techniques for removing the skin of tomatoes, for example, by the freeze-and-steam technique. However, none of the prior art references teach or suggest the combination of removing the skin of a grape tomato and subsequently drying the tomato in order to produce a dried skinless grape tomato with the above-mentioned water content. In the production of each dried tomato product in the prior art, whether sun-dried or oven-dried, 'regular-sized' tomatoes or cherry tomatoes, the skin of the tomato is left intact. In the prior art documents concerning the removal of the skin from tomatoes (for example, see US Patents 5786014, 6007855, 6155163, or 6311611, of record) there is no teaching or suggestion to subsequently dry these products. Even further removed is the suggestion to provide a process to remove the skin from a grape tomato and subsequently dry the product. As stated in applicant's specification at page 3:

In contrast to the sun-dried tomatoes of the prior art, the skin of the grape tomatoes of the present invention must be removed prior to drying. If the grape tomatoes of the invention are dried without first removing the skin, the inner core of the tomato explodes during the drying process creating a popcorn effect with the inside of the tomato raisin pushing its way through the skin from within. In addition to the popcorn effect, if the skin of the grape tomato is left on the fruit prior to drying, the skin becomes dry and flaky during the drying process and the grape tomato loses its color and shape.

There was no acknowledgement of this problem in the art, and thus no suggestion to remedy said problem by removing the skin of the grape tomato prior to drying. See also pages 5 and 6 of the specification for details of the advantages of the instant invention. Such advantages were not taught or suggested by the prior art of record. Finally, although not applicable as art available prior to applicant's

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filing date, the reference entitled "Dried Grape Tomatoes" (copyright 2004, herein made of record) states nothing about the removal of the skin of the grape tomato before drying, and does not appear to employ or suggest such a technique.

Thus, the instant claims are free of the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1700.



**KEITH HENDRICKS  
PRIMARY EXAMINER**